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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 506

FRANK ADAMS & CO., ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

On Appeal From The United States District Court For The Southern District of Ohio, Western Division

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MOTION TO AFFIRM

Pursuant to paragraph 1(c) of Rule 16 of the Revised Rules of this Court, appellees, United States of America and Interstate Commerce Commission, move that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from a final order of a three-judge district court dismissing appellants' suit to set aside an order of the Interstate Commerce Commission entered in *Institute of Scrap Iron &*

Steel v. *Akron, Canton & Youngstown R.R. Co.*, 316 I.C.C. 55.[1] The Commission had held that the present rail rates on scrap iron and steel between points in Official Territory[2] are not unjust and unreasonable in violation of Section 1(5) of the Interstate Commerce Act, 49 U.S.C. 1(5), and do not result in an undue preference or prejudice in violation of Section 3(1) of the Act, 49 U.S.C. 3(1).

In 1929, in *Newport News Shipbuilding and Dry Dock Co.* v. *Baltimore & Ohio R. Co.*, 160 I.C.C. 620, the Commission modified the then existing structure of rates on scrap to prescribe as a maximum reasonable rate, minimum 44,800 pounds, a level 70 percent of the rate on manufactured iron and steel products, minimum 40,000 pounds (*infra*, p. 15). Although drastic reductions in the rates on certain manufactured iron and steel products (known as "list 2 articles") have been made since that time[3] in order to meet intense truck competition (*infra*, pp. 25-26), the relationship between the rates on scrap and the rates on the remainder of the manufactured products (known as "list 1 articles") has remained unchanged.

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[1] The Commission's Report is reproduced herein as an appendix, since the appellants did not append the Report to their jurisdictional statement.

[2] "Official Territory" includes the area east of the Mississippi River and north of the Ohio and Potomac Rivers.

[3] Reductions on "list 2 articles" have been made both by a reduction in the rate for 40,000 pound minimum, and by the establishment of new reduced rates for 80,000 and 100,000 pound minima.

In 1954 the eastern railroads established an alternate reduced rate for scrap useful for remelting purposes, minimum 80,000 pounds, at a level 87 percent of the existing rates on scrap, minimum 44,800 pounds (*infra*, pp. 15-16). These reduced rates were not tied by a percentage relationship to the reduced rates previously established on "list 2" manufactured iron and steel products of the same minimum weight.

In 1960 appellants, major processors and shippers of scrap in the Official Territory, filed a complaint with the Commission charging that present scrap rates are unjust and unreasonable in violation of Section 1(5) insofar as they exceed 70 percent of the prevailing rates on manufactured iron and steel products of the same minimum weight,[4] and that the present scrap rates are unduly prejudicial to shippers of scrap and unduly preferential of shippers of pig iron and iron ore, in violation of Section 3(1). They claimed that as a result of prejudicially high rates on scrap and preferentially low rates on iron ore and pig iron, steel-making consumers of scrap have been substituting iron ore and pig iron in their steel-making processes, to the prejudice of scrap iron. Appellants sought the establishment of new scrap rates on the following basis:

(1) minimum 80,000 pounds, based on 70 percent of the prevailing rate on manufactured iron and steel articles of the same minimum weight;

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[4] In essence the complaint had reference to the lower rates which the Commission had established for "list 2" manufactured iron and steel products.

(2) minimum 100,000 pounds, based on 50 percent of the prevailing rate on manufactured iron and steel articles of the same minimum weight;
(3) no higher than 150 percent of the existing iron ore rates; and
(4) not exceeding 70 percent of the prevailing rates on pig iron.

After full administrative proceedings, the Commission (Division 2) concluded that appellants had failed to show that the existing scrap rates were in violation of either Section 3(1) or Section 1(5).[5] The Commission found that scrap had not been at a market disadvantage in comparison with iron ore and pig iron (*infra*, p. 30), and that, although the volume of scrap consumed had varied with changes in the volume of steel production, the relative consumption of scrap has been stable, whether measured in relation to steel production or to the volume of other raw materials consumed (*infra*, pp. 26-27). There was no evidence, the Commission noted, that the economic difficulties claimed by appellants were attributable to the rates on iron ore, pig iron or manufactured iron and steel. It found instead that they resulted from the decline in steel production and the increasingly severe competition among scrap dealers (*infra*,

[5] The hearing examiner, in a report which exhaustively treated the evidence and the contentions of the parties, had dismissed the complaint as being without merit.

p. 30). The Commission also compared the transportation conditions of iron ore, pig iron and manufactured iron and steel on the one hand with those of scrap on the other. Upon finding that there had been no showing of a substantial similarity in these transportation conditions or of a real disadvantage to appellants by reason of the assailed rates, the Commission concluded that undue preference and prejudice had not been established (*infra*, p. 31).

The Commission also held that appellants had not established their claim that the present rates on scrap are unjust and unreasonable. In coming to this conclusion, the Commission considered *inter alia* (a) the effect of the proposed rates on the revenues of the carriers, (b) data which showed the number of carloads of scrap moving in varying mileage blocks and which compared within each of these blocks the relationships to first-class rates of the present scrap rates and those sought by appellants, and (c) data comparing the present level of rates on scrap with that on other metallic materials (*infra*, pp. 20-23).

The three-judge district court in a *per curiam* opinion held that the Commission's conclusions "are based upon adequate findings supported by substantial evidence" (J.S. 23). The court rejected appellants' contention that certain typographical errors appearing in the Commission's report required reversal, and concluded that appellants had failed to carry the "burden of showing impropriety" (J.S. 24) in the rulings of the Commission's examiner on various objections raised to questions asked by appellants' counsel on cross-examination.

ARGUMENT

This case presents no substantial question warranting plenary consideration by this Court.

1. Appellants' main contention (J.S. 9-14) is that the Commission has abrogated the "70 percent formula" which it established in 1929 in the *Newport News* case for the relationship between rates on scrap, 44,800 pound minimum, and rates on manufactured iron and steel articles, 40,000 pound minimum, and that this has left scrap rates in a "confused and disorderly condition" (J.S. 13). However, even if the Commission's actions over the last ten years could properly be described as an abrogation of the *Newport News* formula—which we deny—this would afford no basis for upsetting the Commission's holding here that appellants had failed to show that existing scrap rates are unjust, unreasonable or unduly prejudicial. These, rather than *Newport News*, are the statutory standards.

Essentially, appellants' contention that present scrap rates are unlawful rests on the fact that they exceed 70 percent of the reduced rates allowed by the Commission on "list 2" manufactured iron and steel products, 80,000 pound minimum. These reductions, however, were authorized from time to time to enable carriers of "list 2" articles to meet severe truck competition.[6] As this Court has recognized

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[6] The comparative table set out in the Commission's report (*infra*, p. 26), illustrates the fact that the movement of scrap by rail has not been subjected to the tremendous pressure of truck competition as have manufactured iron and

(*Barringer & Co.* v. *United States*, 319 U.S. 1, 7-8; *Texas and Pacific Ry. Co.* v. *United States*, 289 U.S. 627, 636-637, and cases cited therein), rates depressed by competitive influences may properly be regarded as an incorrect standard for measuring other rates. On the merits, the Commission properly held, consistent with its prior decision in *Twin City Iron & Metal Co.* v. *Baltimore & Ohio R. Co.*, 300 I.C.C. 281, that appellants had failed to justify an extension of the "70 percent formula" to rates on "list 2" articles depressed by truck competition.[7]

2. Appellants were afforded a fair hearing. Contrary to their contention (J.S. 8-9, 14-17), the Commission's examiner in no instance sustained an objection to a question asked by appellants' counsel on cross-examination on the ground that the information was confidential. The only citation given by appellants in support of this contention is Tr. 243 (J.S. 15). The entire colloquy (Tr. 242-244) on this point, however, makes clear that the examiner ruled that,

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steel articles. The statistics show that for the year 1959, about 4½ million tons of manufactured iron and steel articles moved by truck, compared with 21½ million tons by rail. On the other hand, only about 37 thousand tons of scrap moved by truck in the same period, compared with almost 12½ million tons which moved by rail.

[7] It may also be noted that, as appellants recognize (J.S. 12), the Commission has not applied the *Newport News* formula to rates other than those established on the basis of the 44,800 pound minimum. In this case appellants were seeking to have the formula extended to rates based on an 80,000 pound minimum (J.S. 12). Each of the cases cited by appellants (J.S. 11-12, n. 4), in which the Commission applied the "70 percent formula," involved scrap rates for minimum shipments of 44,800 pounds.

regardless of whether the witness had the right to plead that information is confidential, the issue of the validity of the plea was rendered moot because the witness had answered the question. Furthermore, at another point, the examiner in fact *overruled* an objection that the information requested was confidential and required the witness to answer the question (Tr. 303).

Full and complete cross-examination was permitted, limited only by the well recognized rule (*Houghton* v. *Jones*, 1 Wall. 702, 706; *Philadelphia & Trenton Railroad Co.* v. *Stimpson*, 14 Pet. 448, 460) that cross-examination must be limited to the scope of the direct examination.[8] The examiner's rulings, sustained by the lower court, were well within that "large amount of discretion in the conduct of a hearing [which] is necessarily reposed in an administrative agency" (*Reilly* v. *Pinkus*, 338 U.S. 269, 276) and present no issue warranting plenary consideration by this Court.[9] In any event, the examiner's re-

[8] The witnesses representing the various steel mills who intervened in the proceeding in opposition to appellants' complaint confined their direct testimony almost entirely to industry-wide conditions. Where the direct testimony was so limited, the examiner properly ruled that appellants were not entitled to cross-examination as to conditions in the individual steel mills, as such questions exceeded the scope of the direct testimony (Tr. 174-175, 178, 241-242). In a number of instances, however, where a witness had given direct testimony as to individual experiences of his own plant, cross-examination as to other details of the plant's individual experience was permitted over objection (Tr. 38, 132, 141, 180-181, 257).

[9] As a result of appellants' charges, the three-judge court during the hearing on the complaint requested the parties to

striction of the cross-examination in no way denied appellants the opportunity to introduce the same information by calling the same witnesses or by other evidence as part of their own case. See Tr. 288; Rule 56 of the Commission's General Rules of Practice, 49 CFR 1.56. The fact that this would have changed the order of proof presents no issue for review by this Court.

3. Appellants contend (J.S. 17-18) that the presence of certain errors in the Commission's report necessitates reversal of the order. It was pointed out in the answer filed by appellees in the lower court that the errors complained of (which related to undisputed facts as to the movement and average price of scrap and steel on various dates) were obviously nothing more than typographical errors. Furthermore, the errors affected neither the essential findings nor the ultimate conclusions of the Commission. The three-judge court accepted appellees' explanation and rejected appellants' contention. Thus, the threshhold issue is whether the errors were typographical, scarcely an issue warranting plenary review by this Court.

4. Appellants also suggest that various findings of the Commission are without support in the evidence—the findings as to the transportation charac-

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submit additional briefs. Each side submitted two supplemental briefs dealing, among other things, with the question of whether the examiner had improperly restricted appellants' cross-examination. The court concluded that "a thorough review of the record in this case" does not bear out appellants' complaint "that they were denied a fair hearing and due process of law by reason of the limitation placed on their cross-examination * * *" (J.S. 24).

teristics of scrap and the other commodities here involved, and the movement and consumption of scrap in Official Territory (J.S. 14-15, 18-19). The lower court, however, after reviewing the evidence, concluded that the contention was without merit and this factual determination warrants no further review. *Radio Corporation of America* v. *United States*, 341 U.S. 412, 420; *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 490-491; *United States* v. *Pierce Auto Freight Lines, Inc.*, 327 U.S. 515, 536.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted.

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OCTOBER 1963.

APPENDIX

29756

INTERSTATE COMMERCE COMMISSION

No. 33535

INSTITUTE OF SCRAP IRON & STEEL, INC., ET AL v. AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY ET AL.

Decided April 2, 1962

Rail rates on scrap iron and steel between points in official territory, found not shown to be unjust, unreasonable, or otherwise unlawful. Complaint dismissed.

Howard Gould and *David Reichert* for complainants.

Robert H. Bierma, Benson T. Buck, Ralph M. Buzek, Richard E. Costello, and *Richard J. Murphy* for defendants.

Edward M. Boyne, Robert N. Burchmore, R. R. Clark, C. F. Coombs, W. G. Felton, John E. Gross, R. W. Kelly, F. W. Klos, John J. McDermott, Paul V. Miller, Warren Price, Jr., F. J. Walliser, and *Robert R. Wertz* for various interveners.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS FREAS, WEBB, AND HERRING

HERRING, *Commissioner:*

The complainants filed exceptions to the report proposed by the examiner, to which the defendants and

certain interveners replied. The defendants moved to strike certain matter in the complainants' exceptions as in violation of rule 1.96(a) of the General Rules of Practice. In view of our ultimate findings, no ruling on the motion is necessary. Exceptions and requested findings not specifically discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

By complaint filed on August 12, 1960, the Institute of Scrap Iron & Steel, Inc., hereinafter called the Institute, and 360 of its 500 members in official territory, all scrap dealers or brokers, allege that the present rail rates[1] on scrap iron or steel between points in official territory are unjust and unreasonable to the extent that they exceed 70 percent of the prevailing rates on manufactured iron and steel products, and that the higher level is also unduly prejudicial to dealers in scrap and unduly preferential of shippers and receivers of pig iron and iron ore. They seek removal of the alleged unlawfulness by the prescription of maximum rates on scrap iron, (1) minimum 80,000 pounds, based on 70 percent of the prevailing level of rates on manufactured iron and steel articles at the same minimum weight; (2) minimum 100,000 pounds, based on 50 percent of the above-mentioned iron and steel basis; (3) no higher than 150 percent of the existing iron ore rates; and (4) not exceeding 70 percent of the prevailing rates on pig iron.

The Northwestern Steel & Wire Company, a steel producer and consumer of scrap located at Sterling, Ill., is an intervener in support of the complainants. Certain other steel producers and consumers of scrap,

[1] Rates and rate differences are stated per gross ton, except as otherwise indicated, and do not include Ex Parte No. 223 general increases.

at numerous locations in official territory, intervened in opposition to the establishment of rates on scrap iron based on a specific relationship to rates on other raw materials of the steel industry or to unmanufactured iron and steel articles. None of these interveners is defending the present scrap rates, nor do they oppose the attempt here made by the complainants to obtain lower rates.

Scrap iron is important traffic to the railroads. The annual average movement within official territory in 1955 to 1959 was approximately 16 million net tons. The defendants' annual average revenue on scrap for the same period was $64 million. Scrap iron is described by the Commission in *General Commodity Rate Increases*, 1937, 223 I.C.C. 657, as—

> a low grade commodity of no value except for remelting and conversion into castings and billets. It is the principal raw material for the manufacture of iron and steel. About 50 percent of the total scrap iron annually consumed is a waste product of the steel mills and is remelted at these same mills. This "home Scrap", as it is called, therefore, requires no transportation. The other 50 percent is largely gathered from rural communities and other places where there is no local consumption and is shipped by rail in considerable quantities. Before shipment it must be sorted and prepared for the special uses of purchasers. The rail shipments load heavily, averaging about 42 net tons per car. Scrap requires no special equipment or expedited service, and there are few claims for loss or damage. The average rail haul is about 140 miles.

When *Increased Freight Rates, 1958*, 302 I.C.C. 665, was decided, the average rail haul had decreased

to 105 miles, and it is now 102 miles. Scrap iron ranges from very light to very heavy. Turnings are an example of light scrap and usually weigh between 45,000 to 58,000 pounds per car. Unprepared scrap generally averages less than 44,800 pounds. No. 1 heavy melting scrap is the most expensive of the many grades of scrap iron and usually loads from 96,000 to 125,000 pounds.

The production of steel in 1958-59 was 78.4 percent of 1956-57. This decline in steel production resulted in a like decline in the consumption of raw materials and in rail carloadings. For example, in 1958-59 scrap iron consumption was 77.7 percent of 1956-57, iron ore 74.4 percent, and pig iron 76.4 percent, and rail carloadings of scrap, iron ore, and pig iron aggregated 66.5 percent.

The volume of scrap consumption is closely tied to the volume of production of the steel industry. Over the years 1946 through 1959, the total consumption of scrap varied from a low of 36.5 million tons in 1946 to a high of 63.9 million in 1955. During this 14-year period, the average production of ingots and castings was 94,791,000 tons, as compared with the average consumption of scrap of 51,697,000 tons, or 54.5 percent, reflecting an average consumption of scrap of 1,090 pounds for each ton of steel produced. Despite the wide variations in the volume of scrap consumed, the ratio of scrap consumption to the production of ingots and castings has varied, during these years, within the narrow range of 52 and 57.2 percent. Thus, the volume of scrap consumed has varied between 1,040 and 1,144 pounds per ton of steel produced. In 1959, the figure was 1,090 pounds, exceeding the amounts for 1957 and 1958, and the same as the 14-year average.

Scrap prices are compared with steel production by months for the years 1958 through 1960, reflecting the composite average for Chicago, Ill., and Pittsburgh and Philadelphia, Pa. These comparisons show that changes in the price of scrap regularly precede changes in the volume of steel production. Thus, the price of scrap varies widely in accordance with demand. For example, starting when steel production was high after the end of the 1959 strike in the steel industry, scrap dropped from $45.67 per ton in November 1959 to $28.29 in November 1960, when steel production was steadily declining.

The price of pig iron has increased steadily since 1944, from $24.17 to approximately $70 in March 1961. Related in terms of percentages, using the Bureau of Labor Statistics price index for July 1960 (based on the 1946-49 average as 100), scrap is 88, or down 12 percent; iron ore 169.7, or up 69.77 percent; pig iron 162.5 percent, up 62.5 percent; and finished steel 186.7 percent, up 86.7 percent.

The rates on scrap iron originally were made on a system which grouped origin and destination points, and took account of the major domestic scrap iron markets comprised of the steel-producing areas. This system of commodity rates was partially modified in 1929 when the Commission, in *Newport News Shipbuilding & Dry Dock Co.* v. *B. & O. R. Co.*, 160 I.C.C. 620, prescribed as maximum on scrap iron 70 percent of the manufactured iron and steel rates, minimum 40,000 pounds, prescribed in *Iron and Steel Articles*, 155 I.C.C. 517. This prescription in specific cases from and to particular points did not affect all of the rates on scrap iron within official territory, as the commodity-rate structure which reflected origin and destination groupings provided many rates lower than the prescribed maximum. In 1954, the eastern rail-

roads approved a basis on scrap iron, minimum 80,000 pounds, reflecting 87 percent of the existing rates on scrap iron even though some of those rates were much below the level reflecting 70 percent of the iron and steel rates which had been prescribed as a reasonable maximum. The effect of the 1954 rate adjustment was (1) to provide the 87-percent basis of rates in connection with current commodity rates subject to a minimum weight of 56,000 pounds, as well as those subject to a minimum weight of 44,800 pounds; (2) to provide the 87-percent basis of rates in connection with the class 27.5 exceptions rating; and (3) to confine the list of commodities on which the 87-percent basis applied to those which are useful for remelting purposes only. Statistics taken from the Commission's 1-percent waybill study for 1952 to 1959 show that the level of scrap iron rates as measured against the basic first-class rates has fallen from 15.2 to 12.8 percent.

The scrap iron industry has borne the full impact of every ex parte increase except two since World War II. Commencing with Ex Parte No. 162, *Increased Railway Rates, Fares, and Charges, 1946*, 266 I.C.C. 537, the combined increases amount to 139.9 percent, not including the Ex Parte No. 212 or later increases. At the same time the rates on iron ore were increased 68.8 percent. In Ex Parte No. 212, the proposed increase of 40 cents per net ton was cut to 3 percent, maximum 40 cents, the amount suggested by the scrap industry. In Ex Parte No. 223, *Increased Freight Rates, 1960*, 311 I.C.C. 373, effective on October 24, 1960, scrap rates under $13 were increased by 10 cents per net ton or 11 cents per gross ton, and rates higher than $13 by 20 cents per net ton or 22 cents per gross ton.

The basic position of the Institute is that various technological advances in steelmaking have had an impact on iron and steel scrap by increasing the use of both iron ore and hot metal (molten pig iron) and serving to reduce the volume of scrap consumed; that scrap has been unable to compete effectively with these new processes because of low freight rates granted for iron ore, and to a lesser extent for pig iron; and that for the scrap industry to compete it must have an adjustment in the freight-rate structure to levels commensurate with those of iron ore, pig iron, and manufactured iron and steel articles.

The first technological advance is the direct charging of iron ore in steel furnaces. The Institute urges that these efforts are directed toward the elimination of the blast furnace, the unit which makes pig iron from iron ore. It fears that elimination of the blast furnace will decrease scrap consumption, and points to the 3,932,000 gross tons of scrap consumed in blast furnaces in 1956 as compared with 2,826,000 gross tons in 1959. In the meantime, blast furnaces have increased in production because of the sintering and pelletizing of iron ore, improved limestone, better coke, and oxygen. In connection with the increased use of iron ore, the Institute points to statistics showing an increase of 123.3 percent in the use of foreign iron ore in the period 1950-59.

A second technological change involves the basic oxygen converter process. This produces steel of an excellent quality in less time than is required in the standard open hearth. It does this with a charge which is largely hot metal. Scrap is not used to provide metallics, as in other steelmaking methods, but finds its major use as a working agent. During 1959, the percentage of scrap used in the basic oxygen process was 26.8 percent, as compared with 42.2 percent

in the open hearth. The Institute believes that with additional research the oxygen converter process would use additional scrap, but submits that there is little incentive to perform this research when hot metal can be made cheaply from iron ore moving at low freight rates. A third technological change is the use of high purity oxygen fed into open-hearth furnaces through lances which are inserted into the open hearth.

Aside from the foregoing technological changes in steelmaking, the Institute states that home scrap is being used in increasing amounts. In 1950, 26 percent of home scrap was consumed, and in 1959 the percentage increased to 29.1 percent. In 1954, 632,509 net tons of scrap moved by barge, and in 1958 this figure had grown to 1,044,783 tons. While scrap consumption fell 30.4 percent in the period 1956-58, truck movements declined by 23.5 percent and rail movements by 48.08 percent.

Between 1956 and 1959, there was a decline of approximately 9.4 million tons, or 27 percent, of purchased scrap consumed by both steel mills and foundries. During this time, steel production declined only 17 percent. According to the Institute, the difference between these two figures represents scrap sales that were lost by the scrap industry to hot metal made from iron ore, much of it from foreign countries, transported by vessels largely owned by the steel companies, and handled from the ports of New York, N.Y., Philadelphia, and Baltimore, Md., at rates 25 to 35 percent of the rates on scrap iron for the same distances.

Thirteen scrap dealers and brokers in official territory, who do not themselves generate or consume scrap, testified mainly as to the conditions from 1958 to 1960. These complainants buy, prepare, and sell

scrap, and their direct competition is with other dealers. They take the position, among other things, that a large percentage of scrap movements are restricted to short hauls because the rates absorb too much of the actual value of the commodity. From Philadelphia to Bethlehem, Pa., 57.8 miles, the scrap rate is $3.85, minimum 80,000 pounds, as compared with the iron ore rate of $2.12. From Albany, N.Y., to Ashland, Ky., and Portsmouth, Ohio, iron ore moves at $5.13, as compared with the scrap rate of $18.38, minimum 80,000 pounds. On the same minimum weight, the manufactured iron and steel rates from Ashland are equal to or lower than the 80,000-pound scrap rates to Bethlehem, Philadelphia, Phoenixville, and Conshohocken, Pa. From Baltimore to Ashland, Pittsburgh, and Warren and Youngstown, Ohio, iron ore moves at rates of $4.14, $3.29, $3.47, and $3.47, respectively, and the scrap rates are $14.58, $10.87, $12.47, and $12.47. From Cleveland to Hamilton and Middletown, Ohio, the scrap rate is $8.58, as compared with the new steel rates of $8.06 and $7.84, respectively, a pig iron rate of $7.45, and an iron ore rate of $2.82. The rates on scrap represent 25 to 70 percent of its delivered price.

In 1929, new steel sold for about $50 per ton and scrap a third less. Today, the premium grade of scrap sells for under $90 per gross ton while new steel generally averages between $120 and $150. In 1959, new steel moved on 90,000-pound rates and scrap on 44,800-pound rates. Today, virtually no steel moves on the 90,000-pound rates. One of the largest scrap iron brokers in the United States, handling several million tons each year, testified that its shipping range has been narrowed to 200 miles from Chicago because of high rates. For example, during 1946, from Evansville, Ind., to Chicago the 80,000-

pound scrap rate was $3.58; today it is $8.91, although the market price of scrap is lower than in 1946. From Chicago to Canton, Ohio, the scrap rate is $10.67, minimum 80,000 pounds, while pig iron moves at $10.56 and finished steel at $10.53. In previous years this broker was able to ship 300 miles at rates under $5 per ton to western Ohio, Indiana, Illinois, and Michigan.

Two nonintegrated steel companies support the complainants, the Green River Steel Corporation at Steelton, Ky., and the Northwestern Steel and Wire Company with plants at Sterling and Rock Falls, Ill. The former is dependent entirely upon scrap generated in Illinois, Indiana, Michigan, and Ohio to supply its two large electric furnaces with 100,000 to 150,000 tons of scrap iron annually. During a recent 12 months, the latter company received over 900,000 tons of scrap by rail, plus substantial truck tonnage. While it does not use pig iron, iron ore, or hot metal, it does compete with mills who use these ingredients. It emphasizes that the present scrap rates in official territory follow no consistent rate or mode of progression, that in many instances they are higher than the present rates on manufactured iron and steel articles, minimum 80,000 pounds, and that iron ore rates are on a substantially lower level than scrap rates and lower than iron and steel rates.

The defendants developed a traffic study covering the actual movement of scrap in 12,515 cars between points in official territory for the period October 16 to November 17, 1960. Approximately 70 percent of the cars in the 60,000- to 80,000-pound bracket moved at the 87-percent reduced basis with an average loading of 45.04 gross tons per car and an average haul of 102 miles. The average revenue per gross ton was $4.48, and the average short-line distance is 91

miles. The basic 28300 first-class rate for 91 miles is $1.56 per 100 pounds, and the average scrap iron rate is 12.8 percent of first class. The 70-percent basis sought by the complainants would reflect a rate level approximately 71 percent of the one presently in effect, with a reduction of almost 30 percent, and would result in an annual reduction in defendants' revenues of about $8,726,000. The 50 percent basis as sought would produce 51 percent of the existing rates, with an annual revenue reduction approximating $15 million. Admittedly, the traffic that moved during the study period represents a reduced volume of business. To determine the representative nature of the study, the results were compared with a study covering 22,046 carloads in March 1959, and with the Commission's 1-percent waybill study for 1958. The March 1959 study showed an average loading of 102,161 pounds, as against slightly over 100,000 pounds developed by the traffic study. The waybill study also indicated an average loading of 100,000 pounds.

The complainants argue that no consideration should be given to the traffic studies and to the results developed therefrom because the reduced rates sought would produce additional revenue by generating the movement of more scrap and increased loadings. The defendants' experience under the 87-percent basis does not lend support to the complainants' arguments. In 1953, the waybill study designated as Statement TD-1 showed revenues on scrap iron from official to official territory of $68,840,200 from 17,610,700 tons. In 1955, the same publication showed revenues of $59,988,400 from 18,661,800 tons.

The following table, based on the latest available data, shows the number of carloads of scrap moved in the mileage blocks indicated, and the first-class

relationships reflected by the scrap rates on the two bases sought as well as by the present rates:

Mileage blocks	Number of cars	Relationship to first-class rates		
		70-percent basis	50-percent basis	Present scrap basis
		Percent	*Percent*	*Percent*
1 to 25	64,300	4.6 to 7.3	3.3 to 5.2	9.0
26 to 50	44,600	7.3 to 9.7	5.2 to 6.9	10.6
51 to 75	28,000	9.8 to 9.6	7.0 to 6.9	13.7
76 to 100	26,100	10.2 to 10.3	7.3 to 7.4	13.6
101 to 150	25,000	10.0 to 10.4	7.2 to 7.4	15.0
151 to 200	13,800	10.2 to 11.6	7.3 to 8.3	15.6
201 to 250	7,900	11.3 to 12.0	8.1 to 8.6	16.0
251 to 300	7,300	12.3 to 12.2	8.8 to 8.7	15.8
301 to 355	3,900	12.3 to 12.2	8.8 to 8.7	15.8
356 to 400	2,800	12.2 to 12.8	8.7 to 9.1	17.4
401 to 450	1,600	13.8 to 13.5	9.9 to 9.7	17.4
451 to 500	1,400	14.1 to 14.7	10.3 to 10.5	18.0
501 to 600	1,600	15.8 to 15.5	11.3 to 11.1	18.0
601 to 700	800	15.0 to 15.0	11.1 to 10.7	16.0
701 to 800	800	15.2 to 14.8	10.9 to 10.6	16.0
801 to 900	200	15.1 to 15.0	10.8 to 10.7	17.0

It will be noted that, on the 50-percent basis, the complainants are seeking rates in the mileage blocks up to 50 miles on a basis averaging about 5 percent of first class, the approximate basis on which the lowest related commodity, coal, moves in official territory. Coal has an average loading of 128,000 pounds, as compared with 100,000 pounds for scrap.

The table below compares the present level of rates on scrap with the level of rates on other metallic materials moving in volume and loading heavily in official territory:

Commodity	Relationship to first class		
	Interstate	Intrastate	Composite
	Percent	*Percent*	*Percent*
Railway track material	21	18	20.4
Nails, wire	20	16	19.3
Iron and steel pipe fittings	20	13	18.5
Alloys, steel, manufactured	18	19	18.1
Remelting scrap	18	17	17.9
Manufactured iron and steel	19	14	17.5
Cast iron pipe fittings	17	14	16.7
Lead, zinc bars	16	12	15.3
Pig iron	15	12	14.1
Iron and steel n.o.s.	15	10	13.2
Scrap iron	15	11	12.8
Iron and steel bars	14	9	12.7
Iron and steel borings	13	11	12.2
Billets, blooms	15	8	11.7

Iron ore.—The movement of iron ore is highly concentrated. Ninety percent of the total traffic moves from seven Lake ports and three north Atlantic ports, and is delivered to the railroads by vessels in quantities averaging over 12,000 gross tons at the Lake ports and 23,000 gross tons at the Atlantic ports. The remainder of the iron ore traffic originates at eight domestic mine origins and moves in quantities amounting either to trainloads or substantial fractions of trainloads. The entire traffic, amounting to over 60 million net tons in 1957, is delivered at approximately 90 destinations where blast furnaces are located. By contrast, scrap iron moves from many points, 501 origins in a typical month. A study made by the Bethlehem Steel Company showed 263 origins, with individual plants receiving scrap from as many as 115 origins. Although the origin and destination points for iron ore are constant from year to year,

there are frequent changes in the origins from which particular mills obtain their scrap.

The average weight per carload differs widely, iron ore loading in excess of 70 net tons and scrap to 50 net tons. While iron ore moves largely over single-line direct routes, scrap moves over a multiplicity of routes, some of which are extremely circuitous. Because iron ore is frequently delivered to the railroads in quantities in excess of trainloads, it does not require the very expensive terminal services involved in way train and classification-yard services which are characteristic of the movement of any commodity such as scrap, where the typical movement is a single carload. Both iron ore and scrap are transported in open-top equipment, but this is true of about 58 percent of all the carload traffic within official territory. Iron ore rates have never been related to the rates on scrap, but have been designed to suit the needs of the iron ore traffic, ex-lake, ex-tidewater, and locally within eastern territory, and in the light of competition between lakefront and seaboard mills, on the one hand, and interior furnaces, on the other.

Pig iron.—Pig iron moves from relatively few origins. Scrap moves to almost all steelmaking locations while pig iron moves largely to foundries and steel furnaces not integrated with blast furnaces. The average carloading of scrap, as stated, approximates 50 tons, whereas pig iron loads to about 60 tons. Scrap generally moves for shorter distances than pig iron. The eastern railroads have carried between 1.5 and 3.5 million tons of pig iron annually in recent years. Approximately 43,000 cars were used for this movement between points in official territory in 1959. Unlike scrap, pig iron moves with considerable regularity between the same origins and destinations over the same routes.

Manufactured iron and steel articles.—While scrap iron moves from many origins to relatively few destinations, manufactured iron and steel articles move almost everywhere. These movements include those from the many plants of the basic producers and also the secondary movements to and from manufacturers, fabricators, and warehouses located at numerous points throughout official territory. The movement is not confined to shipments to and from the steelmaking furnaces nor to the steel industry, but is widespread throughout almost every type of industry. The volume of manufactured iron and steel is far greater than that of scrap. The average carload of iron and steel is 33 tons for nails and wire, 43 tons for items classified as manufactured iron and steel, and 37 tons for pipe. Scrap moves for much shorter distances, and usually in the direction opposite from that of iron and steel.

Reduced rates on manufactured iron and steel were established in 1950 following a great expansion in the movement of these articles by motor carriers in the years immediately following World War II. Those rates were initially published to become effective on May 1, 1950, and were designed to equal the motor carrier rates on the bulk of the iron and steel moving by truck. The rates were increased soon after their publication, following the general authorizations in Ex Parte No. 175, *Increased Freight Rates, 1951*, 284 I.C.C. 589, by 4 percent on April 4, 1951, an additional 5 percent on August 28, 1951, and to a total of 15 percent effective May 2, 1952. On March 26, 1954, the railroads again reduced their rates on iron and steel articles to reflect the going level of most of the motor carrier rates. These reduced rates were published to apply on a limited list of manufactured iron and steel articles, principally the flat-rolled

products which were particularly susceptible to motor transportation.

Truck competition on manufactured iron and steel articles is much more severe than on scrap, and is effective at substantially all distances, whereas motor transportation of scrap is concentrated largely in the shorter hauls, principally to assembly yards. For such hauls, in addition to the lower level of motor carrier rates, advantages of motor carriage include shorter transit time, greater flexibility of service, and savings in plant handling costs and in smaller inventories due to lower minimum weights and rapid delivery. A further factor is a saving in the expense of blocking and bracing the load, which is required by rail and not by motor. Shrouding and wrapping expense on rail shipments can generally be avoided by the use of trucks. These considerations either do not exist in connection with the movement of scrap, or they carry greater significance in the transportation of manufactured iron and steel.

The following table shows the lack of motor carrier competition in the transportation of scrap and its acute presence in the transportation of manufactured iron and steel articles:

Year	Iron and steel		Scrap		Index of steel production
	Motor	Rail	Motor	Rail	
1946	[1] N.A.	29,836,365	[1] N.A.	10,388,189	100.0
1956	3,941,083	31,022,693	56,650	17,133,920	173.0
1957	3,529,891	29,873,380	44,230	14,772,928	169.3
1958	3,623,750	19,196,697	35,147	9,439,991	126.6
1959	4,414,692	21,500,033	37,086	12,399,204	140.3

[1] Not available.

The evidence establishes that while the volume of scrap consumed has varied with changes in the volume of steel production, the relative consumption of

scrap has been stable whether measured in relation to total steel production or in relation to the volume or other raw materials consumed. The totals of the tonnage of all major raw materials consumed by the steel industry, as reported by the American Iron and Steel Institute, show that for 1959, compared with 1947-49 averages, scrap was the only major raw material that showed an increase in volume consumed. In the same period, consumption of iron ore decreased 11 percent, coal 23 percent, and limestone 36 percent. The tons of scrap consumed per ton of pig iron produced increased 11 percent between 1948 and 1959, while the tons of iron ore decreased 10 percent. Pig iron production in both years was 60 million tons. Thus, of the four basic raw materials entering into the production of steel, scrap is the only one which has not declined in consumption per ingot ton produced. The percentage of scrap to iron ore for 1959 was 47.5 percent, as compared with 43.8 in 1958 and 41.5 in 1957.

Scrap and iron ore are major raw materials in the two separate processes by which steel is produced. Blast furnaces perform a smelting process whereby the iron is separated from the impurities in iron ore. Their primary raw materials are the ore, which provides the metallic content of the product, and coke and limestone, ingredients required to produce the chemical reactions in the furnace. The function of a steelmaking furnace, by contrast, is to refine iron and scrap into steel. The primary ingredients are pig iron and scrap. To those primary raw materials are added the small quantities of iron ore, limestone, and other materials required by the chemistry of the process. Scrap in blast furnaces accounts for less than 2 percent of the total charge and to between 2 and 3 percent of the ore. The scrap thus used con-

sists primarily of home scrap and is of a type that is unsuitable for open hearth use, such as broken skulls, pit and ladle scrap, and other contaminated irons. In steelmaking furnaces, the tonnage in scrap consumed amounts to approximately one-half, whereas the iron ore tonnage amounts to only a small fraction, of the tons of steel produced. Since the two commodities are used largely in different processes, there is small room for competition between them.

While scrap encounters no important competition from iron ore, its use in steelmaking furnaces is, to some extent, alternative to the use of pig iron. For example, in 1959 the percentage of scrap to the total tons of scrap and hot metal amounted to 7.8 percent in bessemer converters, 44.1 percent in open hearths, and 81.6 percent in electric and basic oxygen furnaces. These differences in percentages of scrap consumption are made more meaningful when considered in connection with the relative shares of total steel production by each type of furnace. Of the total production of steel in 1959, bessemer converters contributed 1.5 percent, open hearths 87.8 percent, electric furnaces 8.7 percent, and basic oxygen furnaces 2 percent. Throughout the period 1948-59, the percentages of scrap tons to the total tons of scrap and pig iron consumed in steelmaking furnaces varied from the average for the entire period by no more than 2 percent.

The evidence is conclusive that none of the new processes in steelmaking has had any significant effect upon the proportion of scrap used in the production of steel. The direct charging of iron ore in steelmaking furnaces has been a characteristic of the process throughout its history, and its use in furnaces is not to replace scrap but to supply the oxygen required by the process. The oxygen converter is

neither a blast furnace nor an open hearth, but a new type of steel-making furnace different from either that smelts pig iron and scrap to produce steel. In 1959, the first year for which separate data for this type of furnace were published by the American Iron and Steel Institute, the total production process amounted to 1,864,338 net tons. In that same year, scrap consumption in steelmaking furnaces amounted to 45,846,896 net tons, equal to 49.7 percent of the 92,175,540 net tons of ingots and castings produced in that year.

The use of oxygen converters has not had any significant effect upon the consumption of scrap by the steel industry. The use of oxygen lances tends to limit the amount of ore charged to open-hearth furnaces. The use of gaseous oxygen has not changed the ratio of scrap to pig iron, and there is no indication that it will do so in the future. Purchased scrap has provided a nearly constant portion of the total scrap consumed by the steel industry, reflecting 1955-59 percentages of 41, 43, 38, 37, and 40, respectively.

Between 1956 and 1959, scrap consumption was on approximately the same level as steel production, and it was iron ore, not scrap, which suffered the decline in consumption during this period. Total steel industry consumption of scrap in 1959, 47.5 percent, was higher in relation to iron ore consumption than in any previous year since 1952.

Only a small portion of import ore is handled in steel-company-owned vessels; the great bulk of the tonnage is carried in vessels on time or trip charter at going rates in the world market, which fluctuates widely with conditions of supply and demand for bottoms. In 1959, the total actual importations through the port of New York was only 359 gross tons.

Conclusions and findings.—It seems clear that scrap iron has not been at a market disadvantage in comparison with iron ore and pig iron. There is no evidence before us which would suggest that the difficulties testified to by the scrap dealers since 1958 are attributable in any major degree to the rates on iron ore, pig iron, or manufactured iron and steel. The difficulties of the scrap dealers result from the decline in steel production beginning in 1958, and the increasingly severe competition among scrap dealers and brokers. The experience of particular scrap dealers can be of value only if the experience is shown to be representative of the industry as a whole.

There remain for consideration the claims that the present rates on scrap iron are unjust and unreasonable per se. Much of the evidence bearing on this issue has previously been discussed. As noted, the present scrap rates average 12.8 percent of the basic No. 28300 first-class rates. None of the rates that move traffic, as shown by the defendants' traffic study, is in excess of 21 percent of first class. The southwestern and southern rates, which apparently are satisfactory to the complainants, reflect 21 percent of first class, minimum 50,000 pounds, and 18 percent of first class, minimum 80,000 pounds, a basis considerably in excess of the average level on scrap here assailed.

The rates on scrap iron and on other raw materials of the steel industry have always been made to reflect circumstances and conditions particular to each transportation service. The complainants' rate comparisons relate almost exclusively to long hauls. As pointed out, scrap iron within official territory moves mostly for short hauls, which is not true of the other traffic with which comparison is thus made.

An analysis of the short-haul movement in the traffic study shows that out of a total of approximately 4,300 carloads which moved for a short-line distance of 50 miles or less, about 3,200 moved for the account of members of the Institute. The rates at which the traffic moved reflected an average of approximately 10 percent of first class. Many of the rates shown by the complainants are between points where there is no movement. For the most part, the prevailing scrap iron rates at the 87-percent basis are lower than the pig iron rates, despite the fact that pig iron has an 18-percent higher average loading than scrap iron. Moreover, some of the pig iron rates used for comparative purposes have been reduced to meet water competition; for example, the water-competitive rates from Buffalo, N.Y., to Philadelphia and Baltimore, and the water-truck competitive rates from Buffalo to Coatesville and Phoenixville, Pa.

Undue preference and prejudice must be shown by clear and convincing evidence. Substantial similarity in transportation conditions, and a real disadvantage by reason of the assailed rates, must be shown. Such a showing has not been made on this record. As noted, the transportation characteristics of iron ore, pig iron, manufactured iron and steel, and scrap differ widely. Moreover, there is no justification from a transportation standpoint for requiring a rigid relationship between the rates on scrap and the rates on any of these other commodities.

We find that the assailed rates on scrap iron and steel between points in official territory are not shown to be unjust, unreasonable, or otherwise unlawful. The complaint will be dismissed.

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